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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,247	10/14/2003	Gary T. Dane	SMI0077.US	3999

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
3781	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/685,247	DANE ET AL.	
	Examiner	Art Unit	
	/Stephen J. Castellano/	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 June 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 and 3-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1, 3-23 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

Claim 2 has been canceled. Claims 1 and 3-23 are pending.

Claims 10-17 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on April 20, 2006.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5 and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Lai.

Lai discloses a sterilization case assembly comprising a plurality of cases (13, 132), second case 13 stacked upon a first case 132 in vertical direction, the front side of the assembly is toward the right of the Fig. 1 view, the second case is offset from the first case in the Fig. 1 view, each of the cases are movable between closed and open positions, when the top case 13 (second case) is closed by lid 10 and the second from top case 13 just below the top case 13 acts as a lid for and as part of the second case 132 and is in a closed position and the second case (lid 10 and top case 13) is offset from the first case (second from top case 13 and bottom case 132), the limitations of claims 1 and 18 are met. Lai discloses the general rectangular box shape and each sterilization case has a top wall formed by a lid and a bottom wall, the top and bottom walls are parallel to each other and generally horizontally oriented, the bottom wall of a second case directly contacting the top wall of a first case.

Re applicant's "substantially identical" limitation, the bottom portions of the two cases (lower case bottom 132 and upper case bottom of the top most portion 13) are identical, the cases

only differ in their lid structure wherein the upper case has a flat panel top 10 and the lower case has a lid formed from case 13 that sits directly above case bottom 132. “Substantially identical” means more than 50 % identical. Since the bottom wall of the case 13 that forms the lid for lower case bottom 132 is practically 100 % identical to the flat panel 10, then the identical case bottom combined with the identical structure of a flat panel 10 as compared to a flat bottom of case 13 leads the examiner to conclude that the two cases are more than 50 % identical and therefore “substantially identical” as well. By another manner of analyzing, the top case with case 13 as a bottom and flat top lid 10 as a top, the bottom of the top case comprises more than 50 % of its structure. When comparing the top case to the bottom case, the top case is more than 50 % identical to the bottom case because the bottom’s are 100% identical and the bottom of the top case provides more than 50 % of the structure of the top case.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer.

Schafer discloses a sterilization case assembly comprising a plurality of cases (box units 10), second case (any case 10 stacked directly above a first case 10) stacked upon a first case (any case 10 stacked directly below a second case) in vertical direction, the front side of the assembly is toward the right of the Fig. 2 view, the second case is offset from the first case in the Fig. 1 view, each of the cases are movable between closed and open positions (by rear wall

means 18 defined by a removable cover as stated at col. 2, lines 16-17). Schafer discloses the general box shape and each case having top and bottom walls, the bottom wall of a second case directly contacting the top wall of a first case. Although the top and bottom walls are generally horizontal, the top and bottom walls are not parallel or substantially parallel. The Official notice taken in the Office action mailed March 8, 2007 that substantially parallel and fully parallel top and bottom walls and rear and front walls of stacked bins are well known and more typical than top and bottom walls which are slightly skewed from parallel has not been challenged. The Official notice is now being treated as a prior art admission. It would have been obvious to modify the top and bottom walls of each case to be parallel, to modify the bottom wall of one case to be parallel with the top wall of another case, to modify the front and rear walls of each case to be parallel (claim 20) and to modify the rear walls of adjacent stacked cases to be parallel in order to modify the cubic space to be square or rectangular in shape to provide uniform and constant height, width and depth so that the interior can be filled with square and rectangular shaped items of the same shape with no loss of the interior volume.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Liu.

Schafer discloses the invention except for the drawers. Liu teaches a similar stackable case assembly with drawers. It would have been obvious to modify each of the cases (box units 10) of Schafer to have their rear walls defined by removable covers to be replaced with drawers as the access to the drawer from the top is easier and usually better lighted than the side access of the removable cover. Since a case could be defined by a plurality of box units, then one case (having a plurality of box units 10) includes a plurality of drawers.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Liu as applied to claims 3 and 1 above, and further in view of Holsinger.

The combination of Schafer and Liu discloses the invention except for the hinged front cover of claim 4 and the hinged lid of claim 5. Holsinger teaches a hinged front cover and a hinged lid. It would have been obvious to add the front cover and lid to add additional closing to the drawer structure and cases to add to the security of closure as drawers may inadvertently open and spill their contents.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Liu and Holsinger as applied to claim 5 above, and further in view of Hunnell et al (Hunnell).

The Schafer-Liu-Holsinger combination discloses the invention except for the lid being removable. Hunnell teaches a removable lid. It would have been obvious to modify the hinged lid to be removable to replace the lid in case of breakage or damage without the need to replace the entire container.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Liu and Holsinger as applied to claim 5 above, and further in view of Trower.

The combination discloses the invention except for the handle and recessed pocket. Trower teaches a handle and recessed pocket interlocking means. It would have been obvious to add the handle and recessed pocket of Trower to provide secure fastening in the stacked position to prevent stacked articles from separating.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Trower.

Schafer discloses the invention except for the handle and recessed pocket. Trower teaches a handle and recessed pocket interlocking means. It would have been obvious to add the handle and recessed pocket of Trower to provide secure fastening in the stacked position to prevent stacked articles from separating.

Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lai in view of Tabler.

Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Tabler.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer in view of Trower as applied to claim 9 above, and further in view of Tabler.

Lai, Schafer and the Schafer-Trower combination, all individually disclose the invention except for the top and bottom registration elements. Tabler teaches in Fig. 12 identical trays, a top wall top registration element of bottom most tray with the groove that engages flange 17 of the second bottom most tray (the groove between walls 9 and 10) and a bottom wall bottom registration element of flange 17. The top registration element being closer to the rear wall than the bottom registration element. It would have been obvious to modify the stacking configurations to have these registration elements to provide more stability to the stacked configuration. It would have been obvious as a matter of design choice to choose partly spherical shaped elements.

Applicant's arguments filed June 8, 2007 have been fully considered but they are not persuasive. Re Lai, the statement of rejection has been modified to explain that the substantially identical limitation is met by Lai. Re Schafer, applicant notices that the primary reference is

different than the invention because the top and bottom walls are not parallel. Applicant should submit further analysis why the 103 modification of Schafer to have parallel top and bottom walls is not sufficient. It is noted that applicant hasn't challenged the Official notice taken in the non-final Office action mailed March 8, 2007.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/
Primary Examiner
Art Unit 3727

sjc